***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO.2208 OF 1997

% 03.03.2006

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Between:

The Kavitam Cooperative Rural Bank Ltd.,

Kavitam, Poduru Mandal, West Godavari District,

Rep., by its President.

... PETITIONER

AND

Presiding Officer, Labour Court, Guntur and another.

...RESPONDENTS

! COUNSEL FOR THE PETITIONER: Smt. Kavitha Yadav

^ COUNSEL FOR THE RESPONDENT No.2: Smt. K.Lalitha

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1996 SC 1669
2. (1999) 3 SCC 679

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.2208 OF 1997

Dated 3rd March 2006

Between:

The Kavitam Cooperative Rural Bank Ltd.,

Kavitam, Poduru Mandal, West Godavari Dist.

…Petitioner

And

The Presiding Officer, Labour Court, Guntur & another

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 2208 OF 1997

O R D E R:

The petitioner is a Cooperative Rural Bank. The second respondent was employed by the petitioner, initially, as a clerk in the year 1967. Subsequently, he was promoted as Secretary in the year 1976. A charge memo, dated 25.5.1988, was issued, wherein as many as 12 charges were leveled against him, in relation to acts and omissions on his part, while discharging the duties. Ultimately, through an order, dated 16.6.1988, he was dismissed from service. Aggrieved thereby, the second respondent raised an industrial dispute, before the Labour Court, Guntur, as I.D.No.369 of 1990. Through its award, dated 10.10.1996, the Labour Court had set aside the order of dismissal, against the petitioner, and directed his reinstatement into service, with continuity of service, back wages and attendant benefits. The same is challenged in this writ petition.

Petitioner contends that the second respondent was discharging managerial functions, and as such, he did not answer the description of workman, as defined under Section 2(s) of the Industrial Disputes Act (for short "the Act"). Another contention is that the Labour Court did not provide any opportunity to the petitioner, to establish the guilt of the second respondent, though a finding was recorded to the effect that the departmental enquiry was not conducted properly.

No counter affidavit is filed by the second respondent.

Smt.Kavitha Yadav, learned counsel for the petitioner, submits that having regard to the nature of functions assigned to, and duties discharged by, the second respondent, it can safely be concluded that he was discharging the managerial functions and was not entitled to raise industrial dispute. She contends that even if there existed any defect in the domestic enquiry, the only course open to the Labour Court was to have required the petitioner to prove the case, and without undertaking any such exercise, it proceeded to direct reinstatement of the second respondent. It is further pleaded that the observations of the Labour Court, as regards the effect of the judgment in criminal case, *vis-à-vis* the charges leveled against the second respondent, are untenable. She places reliance upon the judgment of the Supreme Court in ***STATE BANK OF PATIALA v. S.K.SHARMA***.

Smt. K.Lalitha, learned counsel for the second respondent, on the other hand, submits that the Labour Court recorded a specific and definite finding that the second respondent is a workman, within the meaning of Section 2(s) of the Act, and that no interference is called for, with the same. She submits that the petitioner did not conduct any enquiry, worth its name, before dismissing the second respondent, and in that view of the matter, the Labour Court was left with no alternative, except to direct reinstatement of the second respondent. As to the effect of the judgment of the criminal court in C.C.No.119 of 1989, on the file of the Judicial First class Magistrate, Palakole, she contends that the charges in the departmental proceedings being the same, as those in the criminal case, the accusation against her client virtually stands wiped of. She places reliance upon the judgment of the Supreme Court in ***CAPT. M.PAUL ANTHONY v. BHARAT GOLD MINES LTD***.

In view of the submissions made by the learned counsel for the parties, three questions arise for consideration, in this writ petition.

The first question is, as to whether the second respondent answers the description of workman, under Section 2(s) of the Act. The Labour Court took into account, the nature of duties entrusted to the second respondent, as well as his emoluments, and found that he deserves to be treated as workman. The bye-laws were referred to, and it was observed that the second respondent does not have any independent powers, and his functions are totally controlled and governed by the Chairman of the Bank. Since nothing is placed before this court to contradict the same, no interference is called for, with the finding recorded by the Labour Court, on this aspect.

The second question is about the procedure adopted by the Labour Court, in recording a finding as to the validity of domestic enquiry and directing the reinstatement of the second respondent.

Before the Labour Court, the second respondent was examined as WW-1, and he filed documents, marked as Exs.W-1 to W-9. On behalf of the petitioner herein, MW.1 was examined and Exs.M.1 to M.10 were marked. Extensive discussion was undertaken, only on the question whether the second respondent was given adequate opportunity, in the departmental proceedings. The Labour Court took serious exception for the continuance of the departmental proceedings, against

the second respondent, even after an interim order was granted by this court in W.P.No.8647 of 1988. It also discussed the merits of the matter. The discussion is so general in nature that it is difficult to discern from it, as to whether it recorded any specific finding about the procedure adopted in the departmental proceedings.

It hardly needs any emphasis that even where a Labour Court or Industrial Tribunal finds that the termination of the service of a workman was not preceded by a proper and legal domestic enquiry, it is under obligation to give an opportunity to the management, to prove the charges in the industrial dispute itself. This mandatory step was not followed by the Labour Court. Therefore, there is a clear and patent illegality in the procedure adopted by the Labour Court. In ***S.K.Sharma's*** case (1 supra), the Supreme Court held that mere noticing of a defect in the domestic proceedings by itself, does not enable a Labour Court to direct reinstatement. The steps to be followed at various stages, depending on the nature of defects noticed in the proceedings, were pointed out.

The last aspect is about the impact of the judgment of the criminal court in C.C.No.119 of 1989. Through a catena of decisions, the Supreme Court held that the finding of the criminal court in the charges against an employee does not *per se* discharge him of the charges in the domestic enquiry. Much would depend upon the scope and ambit of the proceedings in the two sets of the proceedings. If the charges are identical in both the proceedings, an inference can certainly be drawn to the effect that acquittal in the criminal case would wipe out the charges in the departmental proceedings also. Where, however, the charges are different in both the sets of proceedings, such a result would not follow.

In the instant case, as many as 12 charges were framed against the second respondent, in the departmental proceedings. They ranged from the allegations as to misappropriation, to the accusations of negligence in discharging of the duties, failure to maintain records properly, and lapses in making remittances, etc. The charges in C.C.No.119 of 1989, were in relation to some of the instances involving criminal breach of trust. The acquittal of the second respondent of such charges does not, by itself, absolve the second respondent of the charges in the departmental proceedings also.

For the foregoing reasons, the writ petition is allowed and the award of the Labour Court, Guntur, dated 10.10.1996, in I.D.No.369 of 1990, is set aside. The matter is remanded to the trial court, for fresh consideration and disposal, in accordance with law.

While admitting the writ petition, this Court directed the petitioner herein, to deposit half of the amount representing the back wages. It is stated that the second respondent has since withdrawn the amount so deposited. Pending disposal of the I.D. by the Labour Court, after remand, the amount paid to the second respondent shall not be recovered. There shall be no order as to costs.

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3rd March 2006

Note: L.R.Copies be marked.

(B/o)

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